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August 10.2020

Dear Judge Leitman:

I am writing in regards to my federal habe this letter is only being sent to you after diligent attempts to reach the lawyer appointed to my case. Unfortunately at this moment I am having and have had in the past a very difficult time reaching Mr. Wise I've expressed to him numerous times my need to have correspondence with him. So I can participate in this process of assisting me as much as possible I've studied these particular set of issues, for over nine years now. I'm extremely familiar with them. Altough Mr. Wise study of the law is undoubtedly more qualified than my own, and for that reason he has been appointed to represent me on this appeal.

However when it comes to intimacy of the issues in my case and the facts surrounding it, in my humble opinion the 9 years I've studied the specific set of case law, and facts could certainly be complementary to his qualifications to represent me on appeal, and paired correctly will have a good chance of being successful in the outcome.

After you requested clarification on certain things and granted 60 days to each side, I sent Mr. Wise a letter with no response. He has since wrote and informed me of his decision to not make any argument, for clarification on the points you mentioned in the status conference. With the opinion that we can not establish cause and prejudice to overcome the procedural bar that was invoked by the lower Courts. I am seeking permission if possible to formulate an argument establishing cause and prejudice, on my behalf, yet having Mr. Wise continue to represent me on appeal.

Sincerely,

Case#

Phllip Gibbs

14-cv-14028

cc: file

August 10.2020

Dear Mr. Wise:

I am writing you in response to your letter dated 7.16.20, which I received 7.21.20. Again I'm not sure the reason for the delayed mail. That's why I wanted to know the possiblity of you adding me to a J=pay account. It's pretty much direct messages. In your last letter you didn't mention my response to the Judge's questions. So I'm not sure it you are receiving my mail, or just too busy to respond.

However I am diligently trying to help you in assisting me. In the most recent letter you said how you had attempted to formulate an argreement for me based on the judge's questions, that would allow him to hold an evidenenary hearing and rule in my favor that my public trial right was violated.

You mentioned that to do so we would have to establish: 1. That the State decided my case on the merits rather than invoking a procedural bar (failure to object by counsel to the closure) to deny me relief. or 2. overcome the procedural default which requires a showing of cause and prejudice. You stated while the Court of Appeals may have incorrectly stated applicable rule, they assumed there was error but then found I couldn't meet the heightened standard under plain error review.

You also noted that action of the courts was a demonstration of the fact the Court did not decide my case on the merits but rather invoked a procedural bar, and that the Bickham case says that was proper.

You informed me of being left with only the option of showing cause and prejudice. While acknowledging the misleading statement of the trial judge may be cause for the lack of preservation on this public trial claim. You also stated I would be required to show prejudice, (the result of a diffrent outcome), or a fundamental miscarriage of justice, and in your opinion we cannot establish that.

I believe we can certainly over come the procedural default. As we know cause is established by proving ineffective assistance of counsel or by showing that some external factor prevented counsel from previously raising the issue Murry v. Carrier. 477 u.s. 478 (1986) such factors include where the factual basis for a claim was not reasonably available to counsel, or that some interference by officials made compliance impractable Murry 477 u.s. at 488. The facts of my case has covered cause, as you mentioned.

The prejudice prong is satisfied because "The denial of a right to a public trial is considered a structural error for which prejudice is presumed". United States v. Simmmmmons. 797. F. 3d 409, 413 (6th cir. 2015) Structural errors requires automatic reversal despite the effect of the error on the trials outcome (. quotations omitted) [Neder v. United States, 527 u.s. 1, 8 (1999) ] And it is impossible to determine whether a structural error is prejudicial, Sullivan v. Louisiana 508 u.s. 275,281 (1993)] we must then conclude that a Defendant who is seeking to excuse a procedurally defaulted claim or structural error need not establish "Actual Prejudice". Owen v. United States 483 F. 3d 48,64-65 (1st cir. 2007)

Therefore, cause and prejudice has been satisfied. We can overcome the procedural default, which will allow Judge Leitman to hold an evidentary hearing, then rule in my favor that not only was I denied effective assistance of counsel, but my right to public trial was also violated.

Furthermore the Court of Appeals wasn't supposed to review my claim under plain error standard, according to United States v. Bostic 371 F. 3d 865 if the District Court fails to provide the parties with the opportunity to object, they will not have forfeited their objections, and thus will not be required to demonstrate plain error on appeal.

Courts have also ruled that a defendant is not required to show prejudice in order to obtain relief for a violation of the right to a public trial, United Staste v. Galloway 937. F. 2d 542 . 546 (CA. 10 1991)

I write in hopes of you now being able to form a argument on my behalf concerning the "Procedural Bar", and establishing cause and prejudice to overcome it. If you cannot will you write out an affidavit allowing me to make an argument concerning the last status conference questions the Judge had?

Sincerly,

Phllip Gibbs

cc: file

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Judge Matthew F. Leitman
United States District Court of Eastern District
600 Church Street; Chambers 125
Flint MI. 48502

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FLINT, MICHIGAN

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